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FISCAL IMPACT REPORT

SPONSOR Cervantes **ORIGINAL DATE** 2/4/15 **LAST UPDATED** _____ **HB** _____
SHORT TITLE Decrease Marijuana Possession Penalties **SB** 383
ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

New Mexico Corrections Department (NMCD)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 383 would decrease the criminal penalties for possession of marijuana while keeping the penalties for possession of synthetic cannabinoids and marijuana the same. The provisions of SB 383 includes notwithstanding language to ensure that possession of up to eight ounces of marijuana is not punishable with a period of incarceration, though, if convicted, an individual would still be guilty of a misdemeanor. For possession of more than eight ounces of marijuana, an individual would face a 4th degree felony charge.

Additionally, SB 383 would make the use or possession with intent to use drug paraphernalia subject to civil penalty of up to \$50 and, for a second offence, a petty misdemeanor punishable by a fine of up to \$100.

The table below provides the penalties for marijuana possession under SB 383.

Amount Possessed	Crime	Penalty
1 Ounce or Less (1st Offence)	Civil Penalty	\$50 fine
1 Ounce or Less (Subsequent Offense)	Petty Misdemeanor	\$100 Fine
Between 1 and 4 Ounces (First)	Civil Penalty	\$100 Fine
Between 1 and 4 Ounces (Subsequent)	Petty Misdemeanor	\$200 Fine
Between 4 and 8 Ounces	Misdemeanor	\$300 Fine
Over 8 Ounces	4th Degree Felony	Up To 18 Months Incarceration and \$5,000 Fine

FISCAL IMPLICATIONS

SB 383 may result in minimal savings to county detention centers and the PDD and DA's statewide as a result of fewer incarcerations and prosecutions.

Because SB 383 does not change the penalties for possession of marijuana in excess of 8 ounces, the threshold for a fourth degree felony conviction, there will be no impact on the NMCD.

Currently, fines imposed on individuals as part of sentencing for marijuana possession are directed to the general fund. It is unclear what effect, if any, enacting SB 383 may have on fine collection, and thus, on the general fund.

SIGNIFICANT ISSUES

The AGO noted the following in previous analysis of similar provisions:

The bill does not provide any authority or guidance for law enforcement. For instance, when a field officer discovers that someone is in possession of marijuana, would he have to discern whether this was a first or subsequent offense and would he be disabled from making an arrest if the ultimate penalty is a civil penalty? A criminal statute that simultaneously has civil and criminal penalties for the same conduct makes enforcing that statute a challenge for law enforcement. Without clarity as to whether the imposition of a civil penalty is a formal adjudication of guilt there may be Federal consequences implicated such as ability to obtain student loans, and immigration consequences for even the payment of a civil penalty.

CJ/bb/je